

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

AMELIA FOOS, individually and on behalf of all others similarly situated, ) Civil No. 11cv2794 L (MDD)  
Plaintiff, ) **ORDER GRANTING IN PART MOTION FOR APPEAL BOND [doc. #52]**  
v. )  
ANN, INC., a Delaware corporation doing business as Ann Taylor Retail, Inc., )  
Defendant. )  
\_\_\_\_\_  
)

The Objector to the settlement agreement in this action has filed an appeal with the Ninth Circuit Court of Appeals. Plaintiff seeks an appeal bond of \$5,000.00 under Federal Rule of Appellate Procedure 7.

District courts “may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal.” *Azizian v. Federated Dep’t Stores, Inc.*, 499 F.3d 950, 954–55 (9th Cir. 2007) (citing FED. R. APP. P. 7). “[T]he purpose of [an appellate bond] is to protect an appellee against the risk of nonpayment by an unsuccessful appellant.” *Fleury v. Richemont N. Am., Inc.*, 2008 WL 4680033, at \*6 (N.D. Cal. Oct.21, 2008) (quotations and citations omitted). In determining whether a bond should be required, the court should consider: (1) the appellant’s financial ability to post a bond; (2) the risk that the appellant would not pay the appellee’s costs if the appeal loses; and (3) the merits of the appeal. *Miletak v.*

1     *Allstate Ins. Co.*, 2012 WL 3686785, at 2 (N.D. Cal. Aug. 27, 2012); *see also Fleury* at \*6–7.

2         Appeal bonds have been granted regularly when an objector appeals the approval of a  
 3 final settlement in a class action case. *See, e.g., Fleury*, 2008 WL 4680033 at \*6–7 (imposing a  
 4 \$5,000 bond for appeal of the final settlement approval after objector filed notice of appeal);  
 5 *Miletak v. Allstate Ins. Co.*, 2012 WL 3686785, \*1 (N.D. Cal. Aug. 27, 2012) (imposed a \$60,000  
 6 bond for appeal of the final settlement approval after objector filed notice of appeal); *In re*  
 7 *MagSafe Apple Power Adapter Litigation*, 2012 WL 2339721, \*1 (N.D. Cal. May 29, 2012)  
 8 (imposing a \$15,000 bond on both objectors who filed a notice of appeal); *Embry v. ACER*  
 9 *America Corp.*, 2012 WL 2055030, \*1 (N.D. Cal. June 5, 2012) (imposing a \$70,650 bond for  
 10 appeal of the final settlement approval while appeal was pending); *Yingling v. eBay, Inc.*, 2011  
 11 WL 2790181, \*1 (N.D. Cal. July 05, 2011) (imposing a \$5,000 bond for appeal of the final  
 12 settlement approval after objector filed notice of appeal); and *In re Wachovia Corp.*  
 13 *Pick-A-Payment Mortg. Marketing and Sales Practices Litigation*, 2011 WL 3648508, \*1 (N.D.  
 14 Cal. Aug. 18, 2011) (imposing a \$15,000 bond for appeal of the final settlement approval after  
 15 objector filed notice of appeal). The Court may award an appeal bond comprising appellate costs  
 16 and administrative costs. *Miletak*, 2012 WL 3686785, at 2.

17         Plaintiff contends that a \$5,000.00 bond is appropriate because the Objector has the  
 18 ability to post such a bond and because her appeal is frivolous. Objector argues, however, that  
 19 the cost bond, if required, should be no more than \$200.00 because plaintiff has failed to support  
 20 her estimate of taxable costs and the appeal is taken in good faith.

21         The posting of an appeal bond is warranted in this case. Objector does not contend that  
 22 she would be unable to pay an appeal bond, even one set at \$5,000.00. Neither party has  
 23 discussed the difficulty of collecting payment post-appeal but Objector is a resident of  
 24 California, which suggests this is a neutral factor. But the merits of Objector's appeal weigh  
 25 heavily in favor of requiring a bond. The Court considered each objection Objector put forth in  
 26 discussing the settlement. The Court concluded that each objection was without merit. As a  
 27 result, the posting of an appeal bond is warranted.

28         The amount of the appeal bond sought, however, is excessive. Plaintiff has provided no

1 detail as to why a \$5,000.00 bond would be appropriate. Even allowing for significant potential  
2 administrative costs while the case is on appeal, the Court, in its discretion, finds that \$1,000.00  
3 is a reasonable appeal bond amount.

4 Based on the foregoing, plaintiff's motion for appeal bond is **GRANTED**. Objector Sarah  
5 McDonald shall post a \$1,000 bond or file a notice of dismissal of her appeal within 10 days of  
6 the filing of this Order.

7 **IT IS SO ORDERED.**

8 DATED: May 20, 2013

9  
10   
M. James Lorenz  
United States District Court Judge

11 COPY TO:

12 HON. MITCHELL D. DEMBIN  
UNITED STATES MAGISTRATE JUDGE  
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14 ALL PARTIES/COUNSEL  
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